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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ANTHONY DAVID FLORES,
aka "Anton David," and
16 ANNA RENE MOORE,

17 Defendants.
18

No. 2:22-CR-00593-PA

GOVERNMENT'S **UNOPPOSED** EX PARTE
APPLICATION FOR ORDER PERMITTING
VICTIMS TO ATTEND SENTENCING OF
DEFENDANT ANTHONY DAVID FLORES VIA
VIDEOCONFERENCE OR ZOOM

Hearing Date: June 17, 2024

Hearing Time: 1:30 p.m.

Location: Courtroom of the
Hon. Percy Anderson

19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Andrew M. Roach,
22 hereby applies ex parte for an order permitting the victims to attend
23 the sentencing of defendant Anthony David Flores via videoconference
24 or Zoom. Defendant Anthony David Flores, through his counsel, does
25 not oppose this ex parte application.

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1 This ex parte application is based upon the attached memorandum
2 of points and authorities and declaration of Andrew M. Roach.

3
4 Dated: June 11, 2024

Respectfully submitted,

5 E. MARTIN ESTRADA
6 United States Attorney

7 CAMERON L. SCHROEDER
8 Assistant United States Attorney
Chief, National Security Division

9 /s/ Andrew M. Roach

10 ANDREW M. ROACH
Assistant United States Attorney

11 Attorneys for Plaintiff
12 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

The government respectfully requests that the Court issue an order permitting the deceased victim's family members, his elderly mother and sister, to attend the sentencing of defendant Anthony David Flores, set for June 17, 2024, at 1:30 p.m., via videoconference or Zoom. The victim's mother is in her early 90s, resides in Florida (along with the victim's sister), and is unable to travel to sentencing.

This Court should permit the victim's family members to participate in the defendant's sentencing hearing remotely. Under the Crime Victims' Rights Act ("CVRA"), a crime victim has "[t]he right not to be excluded from any such public court proceeding" 18 U.S.C. § 3771(a)(3); see also Fed. R. Crim. P. 60(a)(3).¹ In this regard, the CVRA prescribes that district courts "shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal court proceeding." 18 U.S.C. § 3771(b)(1). Such reasonable alternatives to physical attendance include attendance by telephone, video teleconference, or web-based video conferencing platforms like Zoom.

II. ARGUMENT

The victim's family has the right to attend sentencing via videoconference pursuant to their rights under the CVRA, 18 U.S.C. § 3771. The victim's surviving family members are afforded the same

¹ Because the CVRA defines and makes no distinction between a "crime victim" and the family members of a deceased victim, such as that here, the government refers to the victim's family members as victims throughout.

1 rights as the deceased victim here under the CVRA. 18 U.S.C.
2 § 3771(e) (2) (B) ("In the case of a crime victim who is . . . deceased
3 . . . representatives of the crime victim's estate [or] family
4 members, may assume the crime victim's rights . . .").

5 Among other rights, the CVRA provides victims the right "not to
6 be excluded from any such public court proceeding" and the "right to
7 be reasonably heard at any public proceeding in the district court
8 involving . . . sentencing." 18 U.S.C. § 3771(a) (3), (4). The Act
9 further provides that "[i]n any court proceeding involving an offense
10 against a crime victim, the court shall ensure that the crime victim
11 is afforded the rights described in subsection (a) (3)" and the court
12 "shall make every effort to permit the fullest attendance possible by
13 the victim and shall consider reasonable alternatives to the
14 exclusion of the victim from the criminal court proceeding."
15 18 U.S.C. § 3771(b) (1). In addition, under Rule 32 of the Rules of
16 Criminal Procedure, a court is required to "address any victim of the
17 crime who is present at sentencing and must permit the victim to be
18 reasonably heard." Rule 32(i) (4) (B); see also Rule 60(a) (3).

19 Recognizing the importance of the victims' rights to reasonably
20 view and participate in all meaningful aspects of the case, including
21 sentencing, courts in this District have routinely permitted the
22 reasonable alternative of videoconferencing as opposed to personal
23 attendance, and allowed victims to participate in sentencings via
24 Zoom. See, e.g., United States v. Boylan, Case No. 2:22-CR-00482-GW
25 and United States v. Gustavo Jaciel Solis, et al., Case No. 2:20-CR-
26 00346(A)-DMG.² Courts in other districts have also permitted victims
27

28 ² The U.S. Attorney's Office is aware that the courts permitted
the victims to view the sentencing via Zoom in these matters.

1 to appear by video. See also United States v. Parcels, 2022 WL
2 4079027 (D. Kan. Sept. 6, 2022) (granting victims' request to appear
3 at sentencing via Zoom when most resided outside Kansas).

4 Rule 53 of the Federal Rules of Criminal Procedure does not bar
5 the victims' participation by Zoom. As an initial matter, Rule 53
6 does not prohibit all videoconferences or teleconferences in general.
7 It only prohibits "broadcasting" of proceedings, which involves the
8 widespread public dissemination of proceedings. "Rule 53, on its
9 face, bars 'the broadcasting of judicial proceedings,' Fed. R. Crim.
10 P. 53 (emphasis added), which clearly entails 'public' distribution
11 to make something 'widely known.'" United States v. Sealed Defendant
12 One, 49 F.4th 690, 699 (2d Cir. 2022) (citing Broadcast, Merriam-
13 Webster, <https://www.merriam-webster.com/dictionary/broadcast>)
14 (emphases in original). The limited use of video conferencing for
15 limited purposes and limited participants does not meet Rule 53's
16 definition of broadcasting because it does not include widespread
17 public dissemination. Id., 49 F.4th at 699 (holding a sealed
18 sentencing via Skype and confirming no unauthorized person was on the
19 call was not a "broadcast" and fell outside the scope of Rule 53).

20 As a result, the victims' limited participation via Zoom here
21 does not constitute prohibited "broadcasting" of the proceedings
22 under Rule 53. The Court can permit them -- and only them -- to
23 appear via Zoom to ensure there is no widespread public
24 dissemination. Rule 53 is not implicated under these circumstances.
25 Indeed, to hold otherwise would suggest that a court could never
26 utilize videoconference which courts routinely do for trials and
27 other matters when extenuating circumstances necessitate it.

1 Moreover, even if Rule 53 does apply to this limited use of Zoom
2 for sentencing, the plain text of the rule recognizes that there are
3 many exceptions to the general prohibition: "Except as otherwise
4 provided by a statute or these rules, the court must not permit the
5 taking of photographs in the courtroom during judicial proceedings or
6 the broadcasting of judicial proceedings from the courtroom." Fed.
7 R. Crim. Proc. 53 (emphasis added). An exception for crime victims'
8 rights was seemingly contemplated by the 2002 Amendments to Rule 53,
9 as reflected in the Advisory Committee's notes. "[A]lthough the
10 revised rule does not explicitly recognize exceptions within the
11 rules themselves, the restyled rule recognizes that other rules might
12 permit, for example, video teleconferencing, which clearly involves
13 'broadcasting' the proceedings, even if only for limited purposes."
14 See Rule 53, Advisory Committee's Note to 2002 Amendment.

15 Indeed, pursuant to policy established by the Judicial
16 Conference of the United States Courts, a court is permitted to have
17 limited broadcasts during multiple situations, all of which
18 demonstrate that Rule 53 is not a blanket prohibition:

19 § 420. A Judge may authorize broadcasting, televising,
20 recording, or taking photographs in the courtroom and in
21 adjacent areas during investitive, naturalization, or other
22 ceremonial proceedings. A judge may authorize such
activities in the courtroom or adjacent areas during other
proceedings, or recesses between such other proceedings,
only:

- 23 (a) for the presentation of evidence;
- 24 (b) for the perpetuation of the record of the proceedings;
- 25 (c) for security purposes;
- 26 (d) for other purposes of judicial administration; or
- 27 (e) in accordance with pilot programs approved by the
28 Judicial Conference of the United States.

1 When broadcasting, televising, recording, or photographing
2 in the courtroom or adjacent areas is permitted, a judge
should ensure that it is done in a manner that will:

3 **(1) be consistent with the rights of the parties,**

4 (2) not unduly distract participants in the proceeding, and

5 (3) not otherwise interfere with the administration of
6 justice.

7 See United States Courts, History of Cameras in Courts at

8 <https://www.uscourts.gov/sites/default/files/guide-vol10-ch04.pdf>

9 (last visited June 11, 2024) (emphasis added).

10 Other statutes and provisions of the Judicial Policy provide for
11 closed-circuit television coverage for victims during trials, which
12 again implicitly recognizes other exceptions to Rule 53. See also 34
13 U.S.C. § 20142; § 440 of Guide to Judiciary Policy ("closed-circuit
14 television coverage of criminal trials is required for victims of
15 crime when the venue of the trial when (1) is moved out of state and
16 (2) is more than 350 miles from the place where the prosecution would
17 have originally taken place").

18 Accordingly, Rule 53 does not bar the victims' request here or
19 trump their CVRA rights to meaningfully participate. The CVRA
20 bestows a right on a victim to not be excluded from any public court
21 proceeding and directs courts to make every effort to permit the
22 fullest attendance possible by victims. Here, the victim's elderly
23 mother resides in Florida, along with the victim's sister, and cannot
24 travel due to her age. Given that current technological capabilities
25 can accommodate an individual's remote participation via video
26 teleconference or Zoom, even while other participants are in person
27 in the courtroom, the government submits that the CVRA and the
28 Federal Rules of Criminal Procedure, in tandem, not only allow for

1 but advise this Court to permit the remote participation the victims
2 at sentencing.

3 **III. CONCLUSION**

4 Accordingly, for these reasons, the government requests that the
5 victims -- and only the victims -- be permitted to view sentencing
6 via Zoom pursuant to their rights under the CVRA.

DECLARATION OF ANDREW M. ROACH

I, Andrew M. Roach, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I represent the government in this case.

2. On June 11, 2024, I communicated with defendant Anthony David Flores's attorney, Ambrosio E. Rodriguez, regarding this ex parte application request. Defense counsel does not oppose the ex parte application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on June 11, 2024.



ANDREW M. ROACH